

information required to re-engage the Board's assessment of the "Grays Bay Road and Port" project proposal (the Proposal) and advising the KIA that the information required was due on or before January 4, 2022. Although interim updates were received from the KIA in 2021 (summarized in Appendix A of this letter), those updates did not provide the information necessary for the Board to re-engage and move the assessment of the Proposal forward to the next steps. The KIA has also not provided a specific timeline as to when the necessary information could be provided in future. Therefore, the NIRB has determined that the Proponent has not met the requirements to resume the Board's suspended assessment of the Proposal within the three-year time limit required by s. 143(4) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*). Consequently, as required by s. 143(4) of the *NuPPAA*, the NIRB is terminating the suspended assessment of the Proposal.

In making this determination, the Board recognizes that the KIA has expressed the intention to move forward with a version of the project in the future, and the Board anticipates that such a project would likely require an assessment by the Board when resubmitted. The Board reminds the KIA that if, in future, they wish to proceed with the project and submit a new project proposal for assessment by the Board, there is a requirement under s. 143 of *NuPPAA*, that the Board "*must consider, and may rely on, any assessment activities carried out*" in respect of the Board's previous assessment of the original Proposal. As such, KIA can expect that the Board may consider and rely on the information and comments submitted in respect of the current Proposal to date, to the extent that these materials remain relevant and reliable in relation to the KIA's future submission of a new "Grays Bay Road and Port" project proposal.

The NIRB would also like to highlight a matter raised in the scoping report issued for this assessment that should be considered in advance of a future application in relation to the activities included in the current Proposal being submitted. Specifically, that feedback gathered at the NIRB scoping meetings in the Northwest Territories identified that there is uncertainty in terms of the roles and responsibilities of the NIRB, the Proponent, and the federal and territorial governments to fulfill the obligations of the Crown in respect of consultation and accommodation of Indigenous rights holders located outside the Nunavut Settlement Area. Along with the specific information which should be addressed in any new application which is outlined in Appendix B of this document, the points in the scoping report related to consultation and responsibilities of parties should also be included in the list of items that should be addressed in a new application.

The NIRB staff remain available to the KIA to discuss the information requirements associated with the submission of a new application, as well as to outline in more detail the extent to which the Board may rely on assessment activities carried out and information received to date during the Board's assessment of the current Proposal.

Sincerely,



Karen D. Costello
Executive Director
Nunavut Impact Review Board

cc: Erica Bonhomme, Nunami Stantec
Wynter Kuliktana, Kitikmeot Inuit Association
Sharon Ehaloak, Nunavut Planning Commission
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Rob Johnstone, Natural Resources Canada
Peter Unger, Natural Resources Canada
Transport Canada
Graham Irvine, Health Canada
Adrian Paradis, Canadian Northern Economic Development Agency
Tineka Simmons, Canadian Northern Economic Development Agency
Grays Bay Road and Port Distribution List

Attached (2): Appendix A: Procedural History of the Grays Bay Road and Port Assessment
Appendix B: Information required to Resume Assessment of Grays Bay Road and Port Proposal

On **January 15, 2018** the Responsible Ministers referred the Grays Bay Road and Port Project to Review by the Nunavut Impact Review Board (NIRB or Board) pursuant to section 94(1)(a)(iv) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*). The Board provided a process map to outline its project Review process, however the following summary is provided to highlight the key steps occurred during the Board's Review

- On **May 2, 2018** the NIRB received a request from the Nunavut Resources Corporation, on behalf of the KIA as a co-proponent of the Proposal, to suspend the assessment of the Grays Bay Road and Port Project.
- On **May 4, 2018** the NIRB confirmed that effective **May 7, 2018** the assessment was to be considered suspended as requested and emphasized the following key points about the suspension and any subsequent request to resume the Board's assessment:
 - KIA was reminded that **if the written request to resume the assessment was not filed with the Board within three years of the suspension date (May 7, 2018), the assessment of the project would be terminated as per subsection 143(4) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*).**
 - Because the request to suspend the assessment of the Proposal came in before the close of the comment period for the *Draft* Scope List, and *Draft* Environmental Impact Statement (EIS) Guidelines and Summary of the *Draft* EIS Guidelines, if a request to resume the assessment was received, the NIRB would evaluate whether the Proponent and all interested parties would require additional time to complete/update their comments on these documents.
 - Upon receipt of a written request from the Proponent for the assessment to resume, the NIRB would consider the circumstances at the time the request was received to provide direction regarding next steps and implications for the previously communicated timelines for the Review.
- On **May 3, 2021** the NIRB received the written request from the KIA to resume the assessment. The KIA noted that it had taken over control and management of Proposal from the Nunavut Resources Corporation. The KIA also indicated that the KIA was conducting analysis that would shape their approach to the carrying out of the Proposal.
- On **May 7, 2021** the NIRB acknowledged the KIA's written request to resume the assessment and outlined the additional information that the Board required the KIA to provide before the Board could resume the assessment and provide updated procedural guidance, specifically:
 - Comments from KIA on the *Draft* Scope for the Proposal, specifically updates to the description of project ownership and confirmation as to whether the activities outlined in the document remain the same as previously proposed; and
 - Whether the KIA is prepared to continue with the Board's assessment process while the analysis of the business case for the Proposal was underway but not yet complete.
 - The Board identified that because the next steps in the assessment, as previously identified in the process map involve the NIRB issuance of a *Final* Scope and the *Revised Draft* EIS Guidelines for comment, the submission of any updates to the *Draft* Scope is necessary before the assessment can progress to the finalization of the Scope and revisions to the *Draft* EIS Guidelines.
- On **June 18, 2021** the KIA provided an update that follow up with the Government of Nunavut to ascertain whether it had any more interest in the Proposal, as well as to engage the

consultants required to address NIRB's questions about the business case and to address the scope of the Proposal was necessary. The KIA noted it would respond to the NIRB's questions as soon as possible. The NIRB required an update on the required information by **September 30, 2021**.

- The **week of September 30, 2021** preliminary discussions occurred indicating that the KIA required additional time to provide the information following making decisions at the Annual General Meeting. As a result of these discussions and recognizing the type of information being gathered, the NIRB provided a final extension to **January 4, 2022** for the KIA to provide the information or firm timeline of the forthcoming information.
- Following the end of the territory-wide lockdown on January 17, 2022 the NIRB engaged the KIA on this deadline, and as the NIRB was not provided with any further new information, it was determined that the requirements to re-engage the assessment process had not been met **therefore effective January 21, 2022 the assessment was terminated as per subsection 143(4) of the *Nunavut Planning and Project Assessment Act, S.C. 2013, c. 14, s. 2 (NuPPAA)***.

APPENDIX B: INFORMATION REQUIRED TO RESUME ASSESSMENT OF GRAYS BAY ROAD AND PORT PROPOSAL

NIRB Public Registry 125069 Document No. 335206

“210507-17XN011-NIRB Ltr to Proponent Re Resumption of Assessment Activities-OMAE.pdf”

Based on the May 3, 2021, letter from the Kitikmeot Inuit Association requesting that the Nunavut Impact Review Board continue its Review of the “Grays Bay Road and Port” project proposal, the following information was noted as required to reengage the assessment:

- Comments from KIA on the *Draft* Scope for the Project, specifically updates to the description of project ownership and confirmation of the activities outlined in the document remaining the same as previously proposed; and
- Whether the KIA is prepared to resume the assessment process while the analysis of the business case remains forthcoming: the next steps noted in the previously issued process map involve the NIRB issuance of a *Final* Scope and the *Revised Draft* EIS Guidelines for comment, followed by an EIS Guidelines Development Workshop and Issuance of the *Final* EIS Guidelines.

NIRB Public Registry 125069 Document No. 317852

“Public Scoping and Environmental Impact Statement Guidelines Meetings Summary Report, March 19 to April 13, 2018, for the NIRB’s Review of the Kitikmeot Inuit Association’s “Grays Bay Road and Port” Project Proposal (NIRB File No. 17XN011)

Summary of comments from participants in Yellowknife:

- Not sure the public of the NWT is being adequately informed.
- NIRB is not consulting, but only engaging. The Duty to consult has not been discharged.
- How will the proponent demonstrate engagement?
- It’s the Crown’s duty to consult. The Project will have huge impact and change everything for the Dene. Huge adjustment needed. Big consultation by the Crown is necessary to participate meaningfully.
- A suggestion: Indigenous rights to be protected by the government, but many are not provided for participant funding by the government. Can the proponent provide the funding?
- Who all are being consulted for this project?

Summary of comments from participants in Inuvik:

- Caribou numbers are down and this is part of our livelihoods. Caribou and fishing are all important to us. Lots of trappers there, especially Anderson River and as they get closer to our land is important and if you want to do something we need to know, you need to inform us.
- Full consultation is needed. Dolphin and Union herd, whales, these are our way of life.